

REMARKS

This reply is in response to the Office Action mailed on March 7, 2007 in which claims 1-17 were rejected. Applicant respectfully requests reconsideration of the present application in view of the reasons that follow.

1. Rejection of Claims 1-2, 4-9, and 13-17 Under 35 U.S.C. § 102(c) as Anticipated by Sasso et al.

On page 3 of the Office Action, the Examiner rejected claims 1-2, 4-9 and 13-17 under 35 U.S.C. § 102(c) as anticipated by Sasso et al., U.S. Patent Application Publication No. 2004/0225292. Applicant respectfully traverses the rejection under Sasso et al.

Independent claim 1 recites “an insert” having “one or more insert fenestrations disposed along the cannulated portion of the insert.” Independent claim 13 recites “an insert . . . wherein the insert is permeable to the substance to be delivered to the bone.” Fenestrations, as described in paragraph [0024] of the present application, “typically extend in the radial direction from the internal cannulation to the exterior of the screw or insert” and are “separate and distinct from the opening at or near the end of the screw or insert created by the cannulation.”

Sasso et al. does not identically disclose an insert having fenestrations or an insert having a permeable portion. In contrast, Sasso et al. discloses an “elongate guiding portion 14” comprising an “axial passageway 54.” See paragraph [0035] and Fig. 3. The axial passageway 54 of Sasso et al. does not have any fenestrations, nor does it include a permeable portion. Accordingly, independent claims 1 and 13 and corresponding dependent claims 2, 4-9, and 14-17 are not anticipated under 35 U.S.C. § 102(b) and are presented for reconsideration and allowance.

2. Rejection of Claim 3 Under 35 U.S.C. § 103(a) Based Upon Sasso et al. in View of Nelson

On page 4 of the Office Action, the Examiner rejected claim 3 under 35 U.S.C. § 103(a) as unpatentable over Sasso et al. in view of Nelson, U.S. Patent No. 5,702,372. As discussed above, Sasso et al. does not identically disclose each of the elements of independent claim 1. The “lined infusion catheter” of Nelson does not remedy the deficiencies of Sasso et al. The “catheter system 22” of Nelson does not appear to include any insert fenestrations. See Figs. 2-4. According, claim 3, which depends from independent claim 1, is presented for reconsideration and allowance.

3. Rejection of Claim 10 Under 35 U.S.C. § 103(a) Based Upon Sasso et al. in View of Miller et al.

On page 5 of the Office Action, the Examiner rejected claim 10 under 35 U.S.C. § 103(a) as unpatentable over Sasso et al. in view of Miller et al., U.S. Patent No. 6,228,088. As discussed above, Sasso et al. does not identically disclose each of the elements of independent claim 1. The “combination drill bit and intramedullary catheter” of Miller et al. does not remedy the deficiencies of Sasso et al. The “intramedullary catheter 10” of Miller et al. does not appear to include any insert fenestrations. See Fig. 1. Accordingly, claim 10, which depends from independent claim 1, is presented for reconsideration and allowance.

4. Rejection of Claims 11-12 Under 35 U.S.C. § 103(a) Based Upon Sasso et al. in View of Wigness et al.

On page 5 of the Office Action, the Examiner rejected claims 11-12 under 35 U.S.C. § 103(a) as unpatentable over Sasso et al. in view of Wigness et al., U.S. Patent No. 5,203,770. As discussed above, Sasso et al. does not identically disclose each of the elements of independent claim 1. The “method and apparatus for catheterization” of Wigness et al. does not remedy the deficiencies of Sasso et al. The “cannula arrangement 41” of Wigness et al. does not appear to

include any insert fenestrations. See col. 7, lines 54-59 and FIG. 4. Accordingly, claims 11-12, which depend from independent claim 1, are presented for reconsideration and allowance.

5. Conclusion

Claims 1-17 are pending in the present application. Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 06-1447. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 06-1447. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 06-1447.

Respectfully submitted,

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